

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BLACK & DECKER INC. and
BLACK & DECKER (U.S.) INC.,

Plaintiffs,

v.

ROBERT BOSCH TOOL CORPORATION

Defendant.

Civil Action No. 06-CV-4440

Honorable Blanche M. Manning
Magistrate Judge Nolan

**DEFENDANT ROBERT BOSCH TOOL CORPORATION'S
MOTION FOR LEAVE TO FILE A NOTICE OF NEW EVIDENCE IN SUPPORT OF
ITS MOTION THAT RES JUDICATA BARS ALL CLAIMS RELATING
TO U.S. PATENT NOS. 6,308,059 AND 6,788,925,
OR IN THE ALTERNATIVE, FOR A STAY PENDING APPEAL**

Robert Bosch Tool Corporation ("Bosch") hereby moves for leave to file a three-page notice of new evidence in support of its motion that res judicata bars Plaintiffs' (collectively "Black & Decker") cause of action asserting that Bosch's PB-10CD Advanced Power Box™ radio infringes U.S. Patent Nos. 6,308,059 and 6,788,925 ("Previously Asserted Patents"). Specifically, this new evidence consists of Black & Decker's notice of appeal from the First Lawsuit (Civil Action No. 04-CV-7955), which was filed **after** the parties completed their briefing on Bosch's res judicata motion. The notice of appeal is significant to this Court's decision on Bosch's res judicata motion because Black & Decker is appealing Judge St. Eve's decision striking the same cause of action from the First Lawsuit and her order refusing to permanently enjoin the sale of the PB-10CD Advanced radio. If this Court denies Bosch's motion to dismiss this cause of action and the Federal Circuit reverses Judge St. Eve's discovery sanction, both this Court and Judge St. Eve will be presiding over the same cause of action in two different

lawsuits. Moreover, Black & Decker's action in appealing Judge St. Eve's orders directly contradicts its primary arguments made in opposition to Bosch's res judicata motion.

A copy of Defendant's Notice Of New Evidence In Support Of Its Motion That Res Judicata Bars All Claims Relating To U.S. Patent Nos. 6,308,059 And 6,788,925, Or In The Alternative, For A Stay Pending Appeal is attached hereto as Exhibit A.

Counsel for Bosch conferred with counsel for Black & Decker regarding this motion as shown in the e-mail attached as Exhibit B. Black & Decker opposes this motion.

WHEREFORE, Bosch respectfully requests that this Court grant it leave to file and accept as filed its Notice of New Evidence, attached hereto as Exhibit A.

Respectfully submitted,

Dated: April 20, 2007

s/ Kirstin L. Stoll-DeBell
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